

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**F.M., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
JAMES H. QUILLEN VETERANS MEDICAL  
CENTER, Mountain Home, TN, Employer**

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**Docket No. 19-0748  
Issued: September 12, 2019**

*Appearances:*  
*Cecil Carter, for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 11, 2019 appellant, through his representative, filed a timely appeal from a December 11, 2018 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act<sup>2</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish that his left shoulder conditions were causally related to the accepted January 3, 2018 employment incident.

## **FACTUAL HISTORY**

On June 27, 2018 appellant, then a 51-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on January 3, 2018 he sustained a left shoulder injury when he caught a patient from falling off a scale and redirected him to his scooter while in the performance of duty. He did not initially stop work.

An employing establishment incident report was filed on June 27, 2018 which documented the claimed January 3, 2018 employment incident. The report noted that a patient was stepping off of an electric floor scale to get back onto his scooter when he lost his balance and began to fall. Appellant reached out his left arm to catch him from falling backwards and redirected the patient back to his scooter. A few minutes later, appellant reported that he had pulled his left shoulder as it was sore.

By development letter dated July 11, 2018, OWCP informed appellant that the evidence of record was insufficient to support his claim. It advised appellant of the medical and factual evidence needed to establish his claim and provided him with a questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence. No further evidence was received.

By decision dated August 15, 2018, OWCP accepted that the January 3, 2018 employment incident occurred as alleged, but denied appellant's claim, finding that he had not met his burden of proof to establish a diagnosed medical condition in connection with accepted employment incident. It noted that he failed to submit medical evidence in support of his traumatic injury claim and, thus, appellant had not met the requirements to establish an injury as defined by FECA.

On August 31, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a January 18, 2018 report, Dr. Richard L. Rolan, Board-certified in internal medicine, related that appellant complained of left shoulder pain, of gradual onset two months ago, and that his symptoms had remained unchanged. He diagnosed left anterior shoulder pain and noted physical examination findings of generalized tenderness to palpation and no swelling. A left shoulder x-ray was ordered on that date which demonstrated no acute bony changes.

A March 24, 2018 left shoulder magnetic resonance imaging (MRI) scan study documented a high-grade partial thickness rim rent tear of the distal anterior supraspinatus tendon.

In an April 9, 2018 report, Dr. Rolan reported that appellant had a history of gradual onset of left shoulder pain from months prior which was unchanged since his recent visit. He diagnosed complete tear of left rotator cuff and referred appellant to an orthopedic surgeon.

Medical reports and work restriction notes dated April 16 through August 8, 2018 were submitted from Dr. Bart McKinney, a Board-certified orthopedic surgeon. Dr. McKinney evaluated appellant on April 16, 2018 and noted review of diagnostic testing. He diagnosed partial

thickness rotator cuff tear and impingement syndrome of the left shoulder, and recommended left shoulder arthroscopy with rotator cuff repair. On April 24, 2018 Dr. McKinney performed a left shoulder arthroscopic subacromial decompression and rotator cuff repair of appellant's left shoulder. He provided a postoperative diagnosis of left shoulder impingement syndrome, osteoarthritis, and partial supraspinatus tear. Dr. McKinney evaluated appellant postoperatively and provided work restrictions.

By decision dated December 11, 2018, OWCP's hearing representative affirmed OWCP's August 15, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>5</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>8</sup> The second component is whether the employment incident caused a personal injury.<sup>9</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship

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<sup>4</sup> See *supra* note 2.

<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

between the diagnosed condition and the specific employment factors identified by the employee.<sup>11</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his left shoulder conditions were causally related to the accepted January 3, 2018 employment incident.

In support of his traumatic injury claim, appellant submitted medical reports dated January 18 and April 9, 2018 from Dr. Rolan who diagnosed complete tear of left rotator cuff. In his January 18, 2018 report, Dr. Rolan related appellant's complaints of left shoulder pain with a gradual onset from two months prior, noting that appellant's symptoms remained unchanged. The Board notes that his medical reports do not provide support for an employment-related injury having occurred on January 3, 2018 as his report indicates that appellant's left shoulder condition predated the employment incident.<sup>13</sup> Furthermore, Dr. Rolan made no reference to the events surrounding the accepted January 3, 2018 employment incident. Without a description of the employment incident, the reports are not based upon a proper factual background and are insufficient to establish causal relationship.<sup>14</sup> Given that Dr. Rolan's reports do not provide a rationalized medical opinion explaining how appellant's January 3, 2018 employment incident caused a left shoulder condition, they are insufficient to meet appellant's burden of proof.<sup>15</sup>

The Board further finds the medical reports from Dr. McKinney dated April 16 through August 8, 2018 are also insufficient to establish appellant's claim. While the physician diagnosed partial thickness rotator cuff tear and impingement syndrome of the left shoulder, he did not provide an opinion as to whether the diagnosed conditions were causally related to the accepted January 3, 2018 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>16</sup> Dr. McKinney's reports, therefore, are insufficient to establish appellant's claim.<sup>17</sup>

The remaining medical evidence is also insufficient to establish appellant's claim. OWCP received diagnostic studies dated January 18 and March 24, 2018; however, the Board has

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<sup>11</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>12</sup> *J.P.*, Docket No. 18-1165 (issued January 15, 2019).

<sup>13</sup> *W.M.*, Docket No. 18-1431 (issued March 22, 2019).

<sup>14</sup> *C.L.*, Docket No. 18-1323 (issued January 3, 2019); *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

<sup>15</sup> *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *G.M.*, Docket No. 15-1288 (issued September 18, 2015).

<sup>16</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>17</sup> *M.K.*, Docket No. 18-1623 (issued April 10, 2019).

consistently held that diagnostic test studies lack probative value as they do not address whether the employment incident caused the diagnosed condition.<sup>18</sup>

In the present case, there is no rationalized medical evidence from a physician establishing that the accepted employment incident on January 3, 2018 caused or aggravated appellant's diagnosed left shoulder conditions.<sup>19</sup> Appellant has therefore not met his burden of proof.<sup>20</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that his left shoulder conditions were causally related to the accepted January 3, 2018 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>18</sup> *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

<sup>19</sup> *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *see Linda I. Sprague*, 48 ECAB 386 (1997).

<sup>20</sup> *V.D.*, Docket No. 16-1345 (issued September 27, 2017).